

WRITTEN STATEMENT

of

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on

**"Health of the Telecommunications Sector: A Perspective from the
Commissioners of the Federal Communications Commission"**

**Before the
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives**

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SUMMARY OF WRITTEN STATEMENT OF FCC CHAIRMAN MICHAEL K. POWELL

February 26, 2003

Two years ago, I appeared before this Subcommittee for the first time as Chairman and noted the enormous challenge of leading the Commission through a period of momentous change in the communications industry. Then, as now, the most formidable task confronting the Commission was recognizing and responding to the fundamental fact that each industry segment in our extensive portfolio was in the throes of revolution. There was new innovation, new markets, new competitors, and, equally important, new regulatory challenges.

Over the course of the last two and a half years, the telecommunications industry has faced many hardships—most of which are the result of financial and economic pressures, misaligned expectations and competitive pressures. That said, there are some bright spots that provide some hope for the sector generally and for the American public specifically. On a going-forward basis, however, great uncertainties continue to plague the entire sector, casting a wide shadow over those bright spots and hindering the recovery of the sector—and in some measure, the economy as a whole.

Clearly, the telecommunications industry, which accounts for anywhere from 14-16 percent of our Nation's GDP, is suffering. By now we are all too familiar with the fact that by some estimates some 500,000 jobs have been lost and approximately \$2 trillion of market value has vanished. Uncertainty looms large as announcements of layoffs have not slowed, as investors have generally shied away from the telecommunications industry and industry players have continued to dramatically scale back capital investments. As I have often stated, the Commission must work to bring some stability back to this industry. That means decisions that are faithful to the 1996 Act and that withstand judicial scrutiny; decisions that focus on producing consumer welfare; decisions that align incentives for investment in facilities; decisions that walk away from past policies of government engineered competition and regulatory arbitrage.

Last week, the Commission had the opportunity, through the Triennial Review decision to reverse the tides of industry uncertainty and unrest by providing a regulatory framework to stimulate long-lasting consumer benefits, sustainable competition, investment, innovation and economic growth. Although we made noble strides in the area of broadband infrastructure deployment, the Commission chose a course in some of its decisions that will cause further unrest for the industry with the ultimate loser being the American public.

I have long held that the development and deployment of broadband capable infrastructure to all Americans is the central communications policy objective of our day. Last week, the Commission took a substantial step in our broadband agenda—focusing on new infrastructure investment in the traditional last mile telephone network—a vision of Congress that is shared by this Commission.

Despite our efforts to spur investment in next-generation broadband infrastructure, I fear that the Commission has taken two actions that will hinder the realization of that investment and the concomitant benefits it will bring to our Nation's citizens and economy. I fear that the majority's elimination of line sharing UNE and its decision to abdicate its statutory responsibility with regard to the switching element flies in the face of the explicit Congressional goals of bringing the American public new infrastructure investment and innovation and meaningful competition. Moreover, it flaunts the admonitions of the judiciary.

With regard to switching, the result—that nearly every industry observer calls a "full employment act for telecommunications lawyers"—violates each and every principle I have long outlined in addressing regulatory reform in this space as it: (1) is legally suspect, in my opinion and does little to "reduce regulation," as required by Congress; (2) is a gross step back from facilities-based competition, the most proven form of consumer welfare producing competition in the telecommunications sector; (3) is harmful to the recovery of the telecommunications economy and our Nation's economy; and, most importantly, (4) is harmful to consumers in the long run.

Telecommunications history, like history generally, cannot be rewritten in one or two years. Indeed, we may not know whether the unwritten history in promoting competition in local telephony and broadband is truly a success for many years. These next six months will be an incredibly busy and significant time for the Commission. The decisions we make will be vital to our efforts to advance the digital migration in this country, and faithfully implement the will of Congress so that consumers can continue to reap the 1996 Act's intended benefits. I am heartened by the great strides taken already in the march of the digital migration. In addition, these decisions will help bring some much needed regulatory certainty and clarity, especially in the face of the numerous adverse court decisions over the last five years, so that the marketplace can adapt and stabilize and industry participants can vigorously compete, invest and innovate—all to the benefit of the American telecommunications consumer.

Good morning, Chairman Upton, Congressman Markey and distinguished members of the Telecommunications and the Internet Subcommittee. Thank you for inviting me and my colleagues to discuss the state of the communications marketplace and the Federal Communications Commission's deregulatory, pro-competitive agenda on which we have embarked to meet the challenges of the changing communications marketplace.

I. INTRODUCTION

Two years ago, I appeared before this Subcommittee for the first time as Chairman and noted the enormous challenge of leading the Commission through a period of momentous change in the communications industry. Then, as now, the most formidable task confronting the Commission was recognizing and responding to the fundamental fact that each industry segment in our extensive portfolio was in the throes of revolution. There was new innovation, new markets, new competitors, and, equally important, new regulatory challenges.

Soon after I began my tenure as Chairman, I laid out the Commission's agenda. The theme that bound the agenda, and encapsulated the enormity of the Commission's overall responsibility, was "Digital Migration." That is, we were and continue to be at a critical crossroad in communications as technology drives us to cross over from the predominately analog realm to the digital world of the modern era. With regards to mature legacy networks, we understood the basic technology and infrastructure elements, their cost characteristics, the service and product offerings, the consumer's wants and expectations, and the role of government intervention to frame overall policy. In the relatively nascent digital world, however, the new advanced architectures and technologies are just beginning to be understood and deployed, with

no clear winning technology or industry. The cost characteristics may differ substantially from those of traditional networks to which we are accustomed. The industry, the capital markets, and the Government collectively find themselves navigating the uncharted terrain of dynamic and chaotic experimentation.

In the ensuing two years, our job has become more difficult as the entire communications sector has been battered by the economy's downturn and the bursting of the dot-com and telecom bubbles. Our task to faithfully implement Congress' vision took on added responsibility as the winds of uncertainty—both financial and legal—swirled continually through the market and the courts. Indeed, on the heels of the sector's decline, the Commission had to confront the rash of bankruptcies to ensure that American consumers and other critical end-users were not significantly impacted by service discontinuances. Additionally, over the last year, the Commission and the country was faced with the scourge of corporate fraud that has been cast by corporate wrongdoers—causing further financial difficulties and WorldCom's bankruptcy, the largest bankruptcy in United States' history. Again, faced with unanticipated convulsion, the Commission enumerated critical steps in furtherance of reform and recovery that the agency, Congress, the Administration, and companies and firms within the industry could undertake.

Our collective challenge has obviously ballooned beyond merely transitioning from the old to the new, stewarding the implementation of our governing statute, and safeguarding the venerable principles of communications policy—e.g., public interest, universal service, competition and diversity. Yet, as I learned in my previous career as a soldier difficulty is a supreme challenge, not an easy excuse. In fact when I set out in my Chairmanship, I expressed a

commitment to engage the "hard issues"; those that were complex, difficult and controversial, but nonetheless desperately needed to be addressed by the Commission to bring certainty and more stability to the market. The Commission began to execute this daunting agenda after long and careful planning, with last week's adoption of the Triennial Review Report and Order. Still to come we will tackle a bevy of proceedings and initiatives dedicated to local competition, broadband deployment, broadcast ownership reform, homeland security, and 21st Century spectrum policy. In doing so, I will continue to be guided exclusively by the public interest, and resist the pressure to view our exercise as awarding benefits and burdens to corporate interest.

Flowing from the public interest, my guiding principles in implementing the will of Congress endeavor mightily to:

- Bring consumers the benefits of investment and innovation in new communications technologies and services.
- Expand the diversity, variety and dynamism of communication, information, and entertainment.
- Empower consumers, by moving toward greater personalization of communications—when, where, what and how they want it.
- Promote universal deployment of new services to all Americans.
- Contribute to economic growth, by encouraging investment that will create jobs, increase productivity and allow the United States to compete in tomorrow's global market.

In the end, these proceedings will shape the communications landscape for years to come. My sincere desire is that the Commission will achieve the right decisions and promulgate rules that will fundamentally provide regulatory clarity and certainty, survive judicial scrutiny and promote long-term sustainable competition and growth to serve the public interest. With this backdrop, I will briefly discuss the health of the telecommunications sector and leave you with

some of my thoughts and, in some areas, concerns regarding the Commission's first big decision of the new year—the Triennial Review.

II. HEALTH OF THE TELECOMMUNICATIONS SECTOR

Over the course of the last two and a half years, the telecommunications industry has faced many hardships—most of which are the result of financial and economic pressures, misaligned expectations and competitive pressures. That said, there are some bright spots that provide some hope for the sector generally and for the American public specifically. On a going-forward basis, however, great uncertainties continue to plague the entire sector, casting a wide shadow over those bright spots and hindering the recovery of the sector—and in some measure, the economy as a whole.

Clearly, the telecommunications industry, which accounts for anywhere from 14-16 percent of our Nation's GDP, is suffering. By now we are all too familiar with the fact that by some estimates some 500,000 jobs have been lost and approximately \$2 trillion of market value has vanished. In some segments, the industry has experienced over-capacity and over-investment in certain markets and aggressive, and some argue unsustainable, pricing wars. We have witnessed accounting scandals; an acute focus on paying down the nearly \$1 trillion of debt carried by telecommunications companies throughout the world; inefficient industry structures; lack of investor confidence; capital markets closing the door to new investment; and companies retrenching by aggressively cutting capital spending and jobs. Given the interconnected and inter-dependent nature of the telecommunications industry, the industry pain has been felt by

nearly everyone—from equipment vendors to service providers. One looks around in vain searching for anyone prospering in the sector.

Still, as we look out at 2003, there are some bright spots for the industry and for consumers. To begin with, demand for communications service continues to rise and in turn so has network traffic, though companies are learning that revenues do not increase proportionally with demand. Yet in the wireline phone space we have actually seen declines in the growth of access lines over the last two years—for only the second time in history—the first being in 1933. In addition, digital migration is allowing service providers to deliver new and innovative services to consumers—from broadband Internet access services to wireless services to new video services—ushering in a new era of competition to the benefit of consumers.

Indeed, in the local phone space, nearly 16.7 million customers are served by facilities-based competitors, a combination of partial facilities-based CLECs (over 4 million lines) and full facilities-based carriers (over 6.2 million lines from cable operators and other full facilities-providers). In addition, a whole generation is being encouraged to "cut the cord" completely—and they are doing so, as an estimated 6.5 million customers use their wireless phone as their only phone. In the wireless space, six national facilities-based carriers are vigorously competing for the 129 million consumers who subscribe to wireless services (as of June 2002). Furthermore, long distance continues to see intense and increasing competition, with some estimates that rates have fallen 33 percent over the course of the last 3 years alone. Competition in the broadband Internet access space continues to flourish and put pressure on wireline revenues (by providing an alternative to second lines and in limited, but growing circumstances,

primary line local and long distance voice services). Over 16 million households subscribe to residential broadband Internet access and that number is growing.

Despite these gains and bright spots, substantial uncertainty continues to plague the industry. There is uncertainty about the disruptive change wrought by new technologies, and, of course, there is massive regulatory uncertainty that has sprung from repeated judicial setbacks in our regulation of local competition and the broadcast media ownership space. Indeed, in the seven years since the passage of the Telecommunications Act of 1996 (1996 Act), the Commission has yet to craft judicially sustainable unbundled network element (UNE) rules, as the Commission's first two attempts were vacated. Furthermore, The Commission faced judicial setbacks in the areas of inter-carrier compensation and reciprocal compensation. On the media side, the Commission has lost its last three cases covering five rules in cable and broadcast ownership regulation in the appellate courts, effectively toppling over the Commission's last biennial review of the broadcast media ownership rules.

This uncertainty looms large as announcements of layoffs have not slowed, as investors have generally shied away from the telecommunications industry and industry players have continued to dramatically scale back capital investments. As I have often stated, the Commission must work to bring some stability back to this industry. That means decisions that are faithful to the 1996 Act and that withstand judicial scrutiny; decisions that focus on producing consumer welfare; decisions that align incentives for investment in facilities; decisions that walk away from past policies of government engineered competition and regulatory arbitrage. We simply must get back to the economic and regulatory fundamentals

envisioned by Congress. Today, the market does not rule, nor does the central planner—the courts' alone rule the telecommunications valley, as bad regulatory decisions have put judges front and center. The 1996 Act hoped to slow judicial oversight and the reign of Judge Greene, yet it has failed utterly in that regard.

III. Triennial Review—One Step Forward, Two Steps Back

Last week, the Commission had the opportunity, through the Triennial Review decision to reverse the tides of industry uncertainty and unrest by providing a regulatory framework to stimulate long-lasting consumer benefits, sustainable competition, investment, innovation and economic growth. Although we made noble strides in the area of broadband infrastructure deployment, the Commission chose a course in some of its decisions that will cause further unrest for the industry with the ultimate loser being the American public.

The Step Forward—Broadband Relief

I have long held that the development and deployment of broadband capable infrastructure to all Americans is the central communications policy objective of our day. The march from analog to digital—what I have often referred to as the digital migration—is at the heart of the Commission's agenda under my leadership. In no area is the migration more profound or promising than in bringing broadband capable infrastructure to all of our Nation's citizens.

Last week, the Commission took a substantial step in our broadband agenda—focusing on new infrastructure investment in the traditional last mile telephone network—a vision of

Congress that is shared by this Commission. Specifically, our decision to provide broadband unbundling relief should set the stage for long-term investment in next generation broadband infrastructure, bringing a bevy of new services and applications to consumers. By refraining from unbundling new advanced network infrastructure, the Commission aligned incentives to invest with the inherent risks and costs associated with broadband infrastructure investment. The result, over time, should be more broadband capable infrastructure to more Americans.

The Two Steps Back: Line Sharing and Switching

Despite our efforts to spur investment in next-generation broadband infrastructure, I fear that the Commission has taken two actions that will hinder the realization of that investment and the concomitant benefits it will bring to our Nation's citizens and economy. Indeed, this sentiment was expressed following the decision by Wall Street analyst Jeffrey Halpern of Bernstein Research, who said that the Commission's "intention to relieve some of the pressure on the RBOCs in order to spur investment and drive technological innovation and broadband infrastructure deployment are almost dead on arrival." I fear that the majority's elimination of line sharing UNE and its decision to abdicate its statutory responsibility with regard to the switching element flies in the face of the explicit Congressional goals of bringing the American public new infrastructure investment and innovation and meaningful competition. Moreover, it flaunts the admonitions of the judiciary.

Line Sharing

Although few of the Commission's actions in implementing the Telecommunications Act of 1996 have produced identifiable benefits to the American public, line sharing has been a

success. Line sharing has given birth to *facilities-based* competitive broadband telecommunications carriers. These line-sharing CLECs have, in turn, provided a valuable source of broadband transmission services to independent internet service providers, such as Earthlink. Indeed, by some estimates, as much of 40 percent of the broadband transmission inputs bought by independent broadband ISPs are procured by facilities-based CLECs. The result has been lower prices for broadband consumers, most notably in the last year—and, of course, with lower prices we have seen continued strong growth in adoption rates even in the face of a down economy. The majority's determination to eliminate line sharing through a three-year phase out that is defined by higher wholesale prices is of immediate concern.

First, the elimination strikes a blow to facilities-based competition and will likely result in higher retail broadband Internet access prices for consumers in the near-term. By limiting facilities-based competition in this space, as the majority has effectively done, the Commission has at best provided no incentive for retail DSL Internet access providers to lower prices and at worst provided an incentive for the large providers (*i.e.*, ILECs and cable operators) to increase retail prices. The majority's action in this space not only turns a blind eye to consumers, but also drives a stake in the Bush Administration's focus on spurring demand and take-rates for broadband Internet access service.

Second, the elimination of line sharing and the resulting elimination of competition in the broadband space could very well provide a disincentive for ILEC investment in next generation architecture. If nothing else, the elimination of line sharing cannot credibly be viewed as an incentive for new infrastructure investment. Line sharing rides on the old copper infrastructure,

not new fiber facilities that we seek to advance to deployment. The presence of line sharing would have provided an incentive for ILECs to invest in fiber networks faster so that they could migrate toward a less regulated environment. Instead, the majority has defied all logic by choosing a course of stepping back from facilities-based competition, stepping back from lower retail broadband Internet access prices and wholesale broadband transmission prices, and finally, in stepping back from providing positive incentives for ILECs to upgrade broadband infrastructure. One fails to see where the public interest was served in this decision.

Switching

In opening this proceeding, the Commission committed itself to conduct a thorough review of its unbundling regime. This review took on greater importance in light of the bursting of the telecom bubble and subsequent economic hardships facing the telecommunications industry and the D.C. Circuit's *USTA v. FCC* decision to vacate, *for a second time*, the rules that unbundled virtually every element in the incumbents' networks. In light of that decision and its predecessor from the Supreme Court, the Commission was charged with reconstructing the list of unbundled network elements from the ground up. In the course of our review, the switching element became the focus of the debate—with over 1,300 competitive switches deployed throughout the country.

The importance of the element, however, is not in its functionality, but in the fact that it represents the capstone of the unbundled network element platform. If the switching element is available on an unbundled basis, a carrier has the option of reselling the entire incumbent's network, at heavily subsidized rates set by regulators, without having to provide any of its own

infrastructure. In short, it can enter the market without bringing *anything* of its own to the party. Since this proceeding began in December 2001, several carriers, most notably the major long distance companies have aggressively attempted to enter the local market using UNE-P.

It is with this backdrop that the Commission considered whether or not, and in which markets, to unbundle the switching element. Unfortunately, a majority of the Commission, in essence, decided not to decide at all—instead, handing over its clear statutory authority to 51 state public utility commissions. In so doing, one looks in vain to find a clear, coherent or consistent federal policy driving its decision. Indeed, the truth is that in the course of our deliberations we never addressed the merits of whether a competitor was actually impaired without access to the switching element and therefore the element should be unbundled. Instead, the focus of the majority was merely on giving the states a subjective and unrestricted role in determining the fate of the switching element, and therefore UNE-P.

With regard to switching, the result—that nearly every industry observer calls a "full employment act for telecommunications lawyers"—violates each and every principle I have long outlined in addressing regulatory reform in this space as it: (1) is legally suspect, in my opinion and does little to "reduce regulation," as required by Congress; (2) is a gross step back from facilities-based competition, the most proven form of consumer welfare producing competition in the telecommunications sector; (3) is harmful to the recovery of the telecommunications economy and our Nation's economy; and, most importantly, (4) is harmful to consumers in the long run.

Legally Perilous

A majority of the Commission chose in the case of the switching element to delegate nearly unbounded authority to state regulators to determine whether a competitor is impaired without access to the incumbent's switching element. Over the course of the next nine months, 51 state public utility commissions will embark on 51 separate and distinct proceedings to determine whether economic and operational barriers to entry exist in a market defined by the state and pursuant to nothing more than federal suggestions for review by the states.

The approach adopted by the Commission suffers from several facial fundamental legal flaws. Indeed, as I mentioned above, there seems to be no logical federal policy driving the Commission's decision. In a regime that allows for unfettered and unreviewable state discretion, one can only assume that the majority has an affinity for UNE-P, which, in turn, can only suggest that the Commission for the third time has adhered to "more unbundling is better" approach—an approach that twice has been rejected by the courts and that flies in the face of the D.C. Circuit's mandate.

Furthermore, the Commission fails to adopt any meaningful limiting principle, as required by Congress and the courts, with regard to switch unbundling. The Commission places switching on the list to be unbundled in the mass market not because of an affirmative finding of impairment, as required by the statute and the courts, but because it "presumes" impairment. More remarkable, even where it "presumes" no impairment it permits some switching for the three months during which a state may rebut the presumption. No affirmative finding of impairment by the Commission as the statute requires—just presumptions and a laundry list of

criteria that a state must review in an effort to find or not find impairment as the state sees fit. This is exactly the regulatory bias twice rejected by the courts.

In addition, the majority fails to apply the very impairment standard adopted by the Commission and applied to every other element under review. Instead of applying the standard to make a judgment on impairment or under what conditions economic or operational impairment exist, it opines only on "factors" that may or may not lead to impairment. Finally, I am somewhat concerned about discussions from some state regulators suggesting states could collaborate or seek guidance from other state proceedings on this issue, much like the 271 process. One fails to see how even this Commission could accept the legality of such collaboration when reviews and findings must be based on the granular state specific findings, according to the majority. For this reasons, as well as others, I fear the Commission may soon find itself in the embarrassing position of having its unbundling regime vacated for a third time.

Abandoning Facilities-Based Competition

Stepping back, the Triennial Review is at bottom about the nature of the competition that Congress and the Commission are trying to incent. It has long been my view that facilities-based competition (both full and partial) has produced the most welfare for consumers (through lower prices and differential product offerings), provides for positive investment for our economy, creates jobs and provides us with valuable infrastructure alternatives in the face of threats to our homeland. As is the case in line sharing, the Commission turns its back on facilities-based competition. By setting up a state review regime where an apparent acceptable outcome is

unbundled switching (and therefore UNE-P) in perpetuity, the Commission retreats from its previously stated policy of promoting facilities-based competition.

One can see on its face why a CLEC that has access to each and every element in the ILEC network at deeply discounted rates would choose simply to resell the ILECs' network as opposed to investing in equipment, such as a switch. How could we expect a CEO to look at his board of directors with a straight face and explain a desire to expend capital on equipment when it could be rented for next to nothing? In addition, this access provides a direct disincentive to those, like cable companies, that might otherwise use their own facilities to enter the market. Indeed, one analyst stated that as a result of the decision last week to perpetuate the life of UNE-P "cable at least would have little appetite to invest in a market where several competitors already existed for consumer voice."¹

Harmful to the Industry; Harmful to the Economy

Equally as troubling is the impact the Commission's decision, or more accurately indecision, will have on the telecommunications industry and our economy. As an initial matter, a failure to implement a regime with any meaningful transition to invest in facilities is a clear negative to telecommunications equipment manufacturers—the historical source of research, development and innovation in the U.S. telecommunications sector and the segment of the telecom economy hit the hardest over the last two years.

¹ Credit Suisse First Boston, *Outcome of Triennial Review of UNE Rules*, at 4 (February 20, 2003).

Furthermore, one can expect continued regulatory uncertainty to accompany 51 state proceedings that may be litigated in 51 different federal district courts where the perceived aggrieved party will surely take its gripes. This could lead to court cases heard by each of the 12 Federal Courts of Appeal where disparate opinions very well may end up before the Supreme Court, the same court that vacated the Commission's first attempt at an excessive unbundling regime in 1999. What is the impact of the uncertainty today? The answer: Investment fleeing the sector.

On Wall Street and the venture capital side of the equation, one can already see what the continued uncertainty is doing to the sector. To be sure, CLECs seeking to devise and implement business plans in the face of uncertain and varying regulatory regimes from state to state will face a monumental task in finding new funding to support their ventures. On February 20, 2003, the day of the Commission's adoption of the Triennial Review Report and Order, the major RBOCs lost over \$15 billion in market cap, one CLEC lost 43 percent, and the major equipment suppliers lost anywhere from 4 percent to 14 percent of their value. Reactions from investment analysts spoke loudly in the wake of our decisions—the entire sector was downgraded by several firms, others suggested that the resulting "enormous uncertainty about the telecom industry" as a result of the Commission's decision "represents a very high level of risk to investors, risk they can avoid by moving their funds to other industries."²

Unfortunately, for consumers, the telecommunications industry and our Nation's economy, the Commission's decision to create greater uncertainty and prolong ambiguity in this area will allow us to test that theory first hand.

² Commerce Capital Markets, *Telecom Regulation Note: FCC's Triennial Highlights*, at 5 (February 21, 2003).

Harmful to Consumers

Finally, and most importantly, the majority's decision to give the states the unfettered ability to continue in perpetuity the house of cards that is UNE-P is likely to prove harmful to consumers in the long run, for it is fatally flawed as sustainable local competition. This is not the low lying plateau on which the high aspirations of the 1996 Act should be planted. It is a model based on assumptions that hundreds of stars will align forever. Every state must keep every element available to competitors and every court must uphold that view—an unlikely scenario considering our 0-for 2 in the courts thus far. It is a model based on every state regulator throughout the land lowering wholesale prices so that the entering LECs can attain the 45-50 percent gross margins on local service that they claim is a prerequisite for some to enter. Furthermore, it is based on the premise that neither the Commission nor Congress will never actually apply the statute and put some teeth to the impairment standard. With each passing day, month and year, the regulatory arbitrage bubble continues to expand ever more perilously with each variable and it is sure to eventually pop, like dot-coms of old. In the meantime, facilities-based investment and competition will take a back seat to regulatory arbitrage to the detriment of every local telecommunications consumer. Let us hope that technology can do what the Commission failed to do—drive the development of meaningful economic competition to the benefit of all of the American public.

IV. CONCLUSION

Telecommunications history, like history generally, cannot be rewritten in one or two years. Indeed, we may not know whether the unwritten history in promoting competition in local telephony and broadband is truly a success for many years. Rather, in assessing our progress in

implementing the 1996 Act, we must strive always to make sure that if we inadvertently take one step backward in our efforts, we take at least two steps forward soon thereafter. Not two steps back, and one forward. These next six months will be an incredibly busy and significant time for the Commission. The decisions we make will be vital to our efforts to advance the digital migration in this country, and faithfully implement the will of Congress so that consumers can continue to reap the 1996 Act's intended benefits. I am heartened by the great strides taken already in the march of the digital migration. In addition, these decisions will help bring some much needed regulatory certainty and clarity, especially in the face of the numerous adverse court decisions over the last five years, so that the marketplace can adapt and stabilize and industry participants can vigorously compete, invest and innovate—all to the benefit of the American telecommunications consumer.